IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2802 of 2006
With
CIVIL APPLICATION No. 9418 of 2006
In
FIRST APPEAL No. 2802 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
And
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO. LTD. - Appellant(s)
Versus
RAVJIBHAI JESANGBHAI PARMAR & 3 - Defendant(s)

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Appearance :
MR MEHUL SHARAD SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/08/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and award dated 10.3.2006 of the Motor Accident Claims Tribunal, Kheda at Nadiad in MAC Petition No.46 of 2005 awarding compensation of Rs.1,35,500/- together with proportionate interest and costs. The claim petition was filed under Section 163A of the Motor Vehicles Act.

2. The learned counsel for the appellant has submitted that the defence of the appellant-insurance company before the Tribunal was that the vehicle in question was not involved in the accident and that apart from raising such a plea in the written statement, on behalf of the insurance company Investigator's report Exh.19/1 and affidavit of owner of the vehicle Exh.19/2 were also produced in support of the said defence. However, the Tribunal has not at all considered the said defence.

3. In view of the above submissions, it was indicated to the learned counsel for the appellant-insurance company that the appellant ought to move the Tribunal. The learned counsel, however, submitted the Allahabad and Patna High Courts have taken the view that the review application is not maintainable under the Motor Vehicles Act. Reliance is placed on the decisions in New India Assurance Company Ltd. vs. Jamuna Devi, **1997 ACJ 446** (Patna), New India Assurance Company Ltd. vs. Bimla Devi, **1999 ACJ 613**

(Allahabad) and Rajkumari vs.MACT, Jaunpur **2002 ACJ 1794** (Allahabad).

4. A perusal of the aforesaid decisions indicates that the above High Courts have taken the view that there is no express provision conferring the power of review on the Claims Tribunal under the Motor Vehicles Acts, 1939 and 1988 and, therefore, in absence of any express statutory provision for review, the application for review would not be maintainable.

5. Section 169 of the Motor Vehicles Act, 1988 in so far as the same is relevant for the purpose of this controversy reads as under:-

> **"169. Procedure and powers of Claims Tribunals**.-
>
> (1) In holding any inquiry under Section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
>
> (2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) ....”

(emphasis supplied)

In exercise of the powers conferred by Section 211, 212(3) and certain other provisions of the Motor Vehicles Act, 1988, the Government of Gujarat has made the Gujarat Motor Vehicles Rules 1989. Rules 213 and 229 thereof read as under:-

> “**213. Exercise of powers of Civil Court** – The Claims Tribunal may exercise all the powers of a Civil Court save in so far as the same are not inconsistent with the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder.
>
> **229. Application of Code of Civil Procedure.**- In so far as these rules make no provision or make insufficient provision, the Claims Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 for the trial of suits.”
>
> (emphasis supplied)

Section 114 and Order 47 Rule 1 CPC read as under:-

> **114. Review**. - Subject as aforesaid, any person considering himself aggrieved, -
>
> (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred
>
> (b) by a decree or order from which no appeal is allowed by this Code, or
>
> (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the

decree or made the order and the Court may make such order thereon as it thinks fit.

Order 47 Rule 1 :

1. Application for review of judgment. - (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation. - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

(emphasis supplied)

6. A perusal of the aforesaid and other provisions of the Motor Vehicles Act and the Gujarat Motor Vehicles Rules, 1989 clearly indicates that there is nothing in the said statutory provisions which would be inconsistent with the power of review conferred on the Civil Court.

7. In **Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others, 1980 (Suppl.) SCC 420** the Apex Court has explained that the expression "review" is used in the two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably errorneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justiciae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal. The principle that the power to review must be conferred by statute either specially or by necessary implication is inapplicable to decisions of Judicial Tribunal which is supposed to do complete justice to the parties before it. To extend the principle to decisions rendered by a Judicial Tribunal would indeed lead to untoward and startling results. Surely, any Judicial Tribunal must be free to review its decision if it has to dispense justice to the parties though of course principles of fair play should be observed.

These principles were also reiterated by the Apex Court in **S. Nagaraj & Ors. vs. State of Karnataka & Anr, 1993 Supp (4) SCC 595 and in Lily Thomas vs. Union of India, AIR 2000 SC 1650 (para 52).**

8. Of course, it is also well settled that the power of review can be exercised for correction of a mistake and not to substitute the view and that such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

9. In **Ram Kirpal Vs. Union of India and another, 1998(3) GLR 1892 (para 6),** a Division Bench of this Court speaking through Hon'ble Mr. Justice J.M.Panchal has held as under:-

> "As a general rule, a judgment, decree or final order once drawn up and signed, cannot subsequently be altered, varied or amended in any manner by the Court or Tribunal which pronounced it. However, there is well recognised exception to the said general rule. It is a maxim of law that an act of a Court shall prejudice no man – *actus curiae neminem gravabit*. Every Tribunal has an inherent jurisdiction, apart from statutory jurisdiction to correct any error committed by itself. It can invoke such jurisdiction and can exercise it in an appropriate case when its conscience is aroused and if it considers that without the exercise of such powers, the ends of justice would be frustrated."

10. In view of the aforesaid statutory provisions and the aforesaid decisions of the Apex Court and another Division Bench of this Court, we are of the view that the application for review is maintainable even in respect of the award made by the Claims Tribunal under the Motor Vehicles Act, 1988.

11. The Madhya Pradesh High Court has also held in **National Insurance Co. Ltd. vs. Lachhi Bai, 1998 ACJ 169** that under the Motor Vehicles Act, 1988 a review application is maintainable when review is sought due to a procedural defect or inadvertent error committed by the Tribunal.

12. The grievance in the instant case is that the Tribunal after having referred to the Investigator's report Exh.19/1 and affidavit of the owner of the vehicle Exh.19/2 in para 5 of the judgment has inadvertently not dealt with the said defence. It is obvious that even in an application under Section 163A of the Act, the claimant has to prove that the vehicle in question was involved in the accident. Hence, this was a material question required to be decided by the Tribunal.

The defence plea raised by the insurance company, and in support of which Investigator's report and owner's affidavit were also produced, has not been considered by the Tribunal.

13. In view of the above observations, the learned counsel for the appellant- insurance company

seeks leave to withdraw this appeal with a view to approach the Tribunal with the application for review.

Leave as prayed for is granted with liberty as prayed for.

The appeal accordingly stands disposed of as withdrawn before effective hearing.

The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Tribunal forthwith.

14. As regards the apprehension raised by the learned counsel for the appellant insurance company about the pending execution proceedings, it will be open to the appellant- insurance company to file an application for review with expedition and to seek appropriate orders from the Tribunal itself, and if the insurance company deposits the amount, a prayer may be made not to disburse the amount provided the insurance company files such an application for review by 31st August 2006.

15. Since the appeal is disposed of, the civil application does not survive and the same is also accordingly disposed of.

Direct service of the writ to be sent down to the Tribunal.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

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